

**REQUEST FOR BIDS**  
**CITY OF MONTGOMERY, TEXAS**

**WATER AND SEWER CONTRACT SERVICE**

The City of Montgomery, Texas is seeking bids to purchase and provide labor and experience to successfully provide service and operation of the city's water and sewer systems. A bid package containing information to prepare and submit a bid is available from the City Secretary at [shensley@ci.montgomery.tx.us](mailto:shensley@ci.montgomery.tx.us). Bids will be opened on the date and at the time and location indicated. The City reserves the right to reject and all bids. Bids will not be accepted after the deadline. Questions regarding submission of bids or technical issues, contact Jack Yates, City Administrator at 936-597-6463.

Submission Deadline: Time: 4:00 p.m.  
Date: Friday, September 25, 2015

Deliver bids to: City of Montgomery  
Attention: Susan Hensley, City Secretary  
101 Old Plantersville Road  
Montgomery, Texas

Mailing address: City of Montgomery  
P.O. Box 708  
Attention: Susan Hensley, City Secretary  
Montgomery, Texas 77356

All bids must be submitted by the time indicated and placed in a sealed package clearly marked on the outside:

**“BIDS FOR WATER AND SEWER CONTRACT SERVICE, 2015”**

Susan Hensley  
City Secretary

This Service Contract (this "contract") is entered into as of this \_\_\_\_ day of October, 2015, by and between City of Montgomery (the "City") a city of the State of Texas organized and operating under the provisions of Chapters 49 and 54, Texas Water Code. \_\_\_\_\_ a Texas Corporation ("CONTRACTOR").

### **RECITALS**

The City owns and operates a water production and distribution system, a sanitary sewer collection system and a treatment facility as described in Exhibit "A" (the "Facilities") and desires to obtain services for the competent operation, maintenance and management of such Facilities. CONTRACTOR is in the business of operating, maintaining and managing water production and distribution systems, sanitary sewer collection systems and treatment facility and desires to enter into this Contract with the City.

### **AGREEMENT**

In consideration of the premises and the mutual undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and CONTRACTOR agree as follows:

#### **I.**

#### **BASIC SERVICES TO BE PERFORMED BY CONTRACTOR**

**Section I.01. General.** CONTRACTOR shall operate the Facilities to serve the purposes for which they are intended in compliance with all applicable laws and regulations, equipment Manufacturers' recommendations and the provisions of this Contract. CONTRACTOR will perform all of the basic services stated in this Article I. The cost for the basic services to be performed by CONTRACTOR is included in the compensation to be paid by the City in accordance with Paragraph I of Exhibit 'C'. All services shall be of good quality and be performed in a professional manner. The standard of care for all professional and related services performed or furnished by CONTRACTOR under this Contract will be the care and skill ordinarily used by members of CONTRACTOR's profession practicing under similar conditions at the same time in the same general locality.

**Section I.02. Staff/Hours of Operation.** CONTRACTOR will make available a staff including no less than one operator holding a Texas Commission on Environmental Quality ("TCEQ") "C" water/wastewater license, and two laborers each Monday through Friday (except holidays as defined in Exhibit 'B' between the hours of 7:00 a.m. and 4:00 p.m. CONTRACTOR staff will provide tools and equipment necessary to service the Facilities efficiently.

**Section I.03. Certified Personnel.** The City's Facilities shall be operated by CONTRACTOR at all times only under the direct supervision of personnel possessing valid licenses and certificates of competency issued by the State of Texas in accordance with the rules and regulations of the TCEQ.

**Section 1.04. Facilities Inspections.** CONTRACTOR will inspect the City's water plants and wastewater plant a minimum of seven (7) days per week and lift stations three (3) days per week or as otherwise directed by the City or required by the TCEQ, and will maintain a log of each inspection and related maintenance activities, in a form approved by the City, as part of the City's permanent records (including such inspections and written logs maintained relative to the City's lift stations). CONTRACTOR shall perform a weekly drive-by inspection (windshield inspection) of the City's other Facilities to check for leaks, broken or damaged meter boxes, broken or damaged valves or valve boxes and other potential damage to the City's assets.

**Section 1.05. Routine Preventive Maintenance.** CONTRACTOR will perform, as required, routine preventive maintenance on equipment at the Facilities, including, but not limited to, exercise of emergency equipment and redundant components, inspections of pump impellers, lubrication, cleaning and replacing filters, inspecting chlorine cylinders, replacement of control lamps or light bulbs, and other maintenance, CONTRACTOR specified by the respective equipment manufacturers as routinely necessary to extend the useful life of the equipment. In the performance of such routine preventive maintenance, CONTRACTOR shall provide appropriate personnel, tools, equipment and supplies as necessary; however, CONTRACTOR shall invoice the City actual costs for expendable items or supplies. CONTRACTOR will maintain permanent records for the City of the maintenance performed on the City's equipment. All extraordinary Preventive Maintenance will be billed as described in the company's rate sheet. The City will provide the CONTRACTOR with a Sales and Use Tax Exemption Certification Form for their records and will not be billed for sales tax.

**Section 1.06. 24-Hour Communications.** CONTRACTOR has available a Communications Center twenty-four (24) hours a day, each and every day of the year, including holidays. The telephone number of the Communications Center is the same as our main customer service phone number and will be clearly displayed on each monthly bill sent by CONTRACTOR to the City. It can also be placed on the City's web site, if any, and in any City newsletter. The Communications Center would provide a communications interface between the City's customers, CONTRACTOR management and field personnel. All CONTRACTOR field personnel will have communication with the Communications Center. After-hours response time for an emergency shall not exceed thirty (30) minutes from the time the call is placed to the Communications Center. The Communications Center will maintain, to the extent reasonably possible, the ability to operate during natural disasters.

**Section 1.07. Telemetric Monitoring.** CONTRACTOR will monitor telemetric signal devices installed at or in the Facilities from its Service Center. Installation of such devices will be at the City's discretion.

**Section 1.08. Board Meetings.** A representative of CONTRACTOR will attend scheduled meetings of the City Council and all special meetings that have an agenda item pertaining to the operations or budgeting of the Facilities and any other meetings which the City Council requires a representative of CONTRACTOR to attend.

**Section 1.09. Monthly Operations Report.** CONTRACTOR will submit to the City in a format acceptable to the City a monthly operations report that will include at least the following information:

1. Total water produced, purchased and sold. Information to be provided by the City;
2. Total water accounted for;
3. Total water usage as indicated by current customer billings;
4. Summary of maintenance and repair back charges;
5. Insurance claims filed or pending disposition;
6. Summary of maintenance and repair by facility classification;
7. A certification of the date required bacteriological tests were performed;
8. Copies of all reports and correspondence made by CONTRACTOR to or received by CONTRACTOR from local, state or federal regulatory agencies on behalf of the City, including any notices of violation or other non-compliance matters and responses to same; and
9. For water production facilities, copies of all permit reports and correspondence made by CONTRACTOR to or received by CONTRACTOR from the TCEQ, the United States Environmental Protection Agency or any local groundwater conservation entity or surface water entity.

A clear audit record of all CONTRACTOR transactions on behalf of the City will be maintained by CONTRACTOR. Records of such transactions will be available to the City's auditor during normal working hours. CONTRACTOR will cooperate in and provide adequate working space for the conduct of audits.

**Section 1.10. Compliance Reports.** CONTRACTOR will prepare and submit all operational and compliance reports required by the TCEQ, the United States Environmental Protection Agency, and any other local, state or federal agency. CONTRACTOR will coordinate all responses to violation or other non-compliance notices on behalf of the City in consultation with the City's engineer. Copies shall be provided to the City as soon as practicable after submission of the Compliance Reports

**Section 1.11. Operational Budgeting.** CONTRACTOR will coordinate with the City bookkeeper to prepare an annual operations budget for review and approval by the City each year as part of the City's annual budgeting process. CONTRACTOR will work with the City's bookkeeper or City Administrator to review and report the City's budget performance at least quarterly throughout the City's fiscal year. Additionally, CONTRACTOR will, if requested, work with the City in the preparation of, and annual updates of, a five-year operations and capital improvements budget.

**Section 1.12. Correspondence and Inquiries.** CONTRACTOR will respond to all correspondence and/or inquiries from the City's Council, staff, consultants or customers in a prompt and professional manner. For calls requiring a response from CONTRACTOR's field representatives, CONTRACTOR shall note the caller's name, time of call, and location of issue and, if requested, shall make this information available to the city.

**Section 1.13. Cooperation with City Representatives.** CONTRACTOR will cooperate fully with all representatives of the City such as engineers, attorneys, accountants and

auditors, including providing time and copies of records, as authorized by the City.

## **II.**

### **OTHER OPERATIONAL SERVICES TO BE PERFORMED BY CONTRACTOR**

**Section 2.01. Use of Staff.** CONTRACTOR will provide the other operational services stated in this Article II. All work performed during regular working hours specified in Article I shall be included in CONTRACTOR's fee for basic services in accordance with Paragraph I of Exhibit 'C'. For other work specified under this Article II the City will pay CONTRACTOR for such services at the rates reflected in Exhibit 'D', as applicable, unless otherwise noted in this Article II.

**Section 2.02. Emergency Repairs.** CONTRACTOR will respond to any emergency (as hereinafter defined) throughout the year, regardless of the day or the time of day, within the time period specified in Section 1.06 above and with personnel qualified in Section 1.03 above. In all cases where, in the opinion of CONTRACTOR, the estimated costs of repair will exceed the dollar amount specified as "Authorized Maintenance Level" in Paragraph II of Exhibit 'C', CONTRACTOR will contact the authorized City member or, if unavailable, any other member to notify the City of the particular situation. CONTRACTOR will simultaneously notify the City engineer. The fact that said notification cannot be made in a timely manner will neither relieve CONTRACTOR of its responsibility to perform the required repair, nor limit the cost of repairs billed in accordance with the pricing covenants of this Contract.

Emergencies are defined as, but are not limited to:

1. A hazardous condition;
2. A loss of water pressure, or serious degradation of water quality at one or more customer locations; or any event related to the water system which would violate regulatory requirements;
3. A blockage or overflow of any type in the sanitary sewer collection; or should include mention of WWTP operations.
4. A condition that, in the opinion of CONTRACTOR, or any authorized City representative, poses an immediate threat to develop into one of the three emergencies listed above.

**Section 2.03. Non-Emergency Repairs.** CONTRACTOR will, during its regular workday; perform repairs that are not emergencies, as defined in Section 2.02 above. CONTRACTOR will schedule such non-emergency repairs on a first-call, first-served basis, unless specifically asked to accelerate its response to a particular item by an authorized City representative. CONTRACTOR must receive approval from the authorized City representative prior to performing non-emergency repairs when, in CONTRACTOR's opinion, the estimated cost of said repair will exceed the dollar amount specified as "Authorized Maintenance Level" in Paragraph III of Exhibit 'C' and where appropriate, consult with the City engineer.

**Section 2.04. Chemical Inventories.** CONTRACTOR will manage and maintain an inventory of chemicals routinely used in the operation of the Facilities. Chemical inventories will be stored at the

Facilities in quantities sufficient to assure continuous operation of the Facilities.

**Section 2.05. Water Main Flushes.** CONTRACTOR will flush the water distribution system once each year. Additionally, CONTRACTOR will routinely flush dead-end water mains, not looped back to the system, within the City's water distribution system in accordance with state requirements to minimize the potential for taste, odor or turbidity problems associated with low flows in such dead-end water mains. After flushing the water distribution system as required in this section, CONTRACTOR shall report the flushing at a City meeting, including a report as to the observed condition of lines and flushing valves and water quality. In addition, CONTRACTOR will promptly investigate each water quality concern or complaint received from City customers and will take appropriate action to address such complaints including, if appropriate, flushing the related water main(s).

**Section 2.06. Bacteriological Analysis.** CONTRACTOR will submit water samples to an authorized Department of Health laboratory in compliance with TCEQ regulations. All test results will be kept as part of the City's records. The City will reimburse CONTRACTOR for the actual cost of these tests.

**Section 2.07. Other Laboratory Testing.** CONTRACTOR will perform, or have performed, all other sampling and laboratory analysis necessary to maintain a safe water supply. Additionally, CONTRACTOR will perform, or have performed, other tests, including, but not limited to, those requested by the City, the TCEQ, the Environmental Protection Agency, or any other governmental agency with jurisdiction over the City's facilities. The City will reimburse CONTRACTOR for the actual laboratory expenses incurred by CONTRACTOR for laboratory analysis.

**Section 2.08. Materials Purchasing.** With the exception of materials used for installation of new taps and meters, CONTRACTOR will purchase and deliver material required to provide services under this Contract, and will bill the City for such materials at cost plus 12%. Materials shall include, but not be limited to, oils, lubricants, chemicals (except chlorine or other water disinfectant), fuel for generators and other materials that may be required to meet regulatory requirements, perform maintenance or provide a quality water supply. CONTRACTOR shall be responsible for arranging to have sufficient amounts of chlorine or other water disinfectant chemical delivered so that the System may be operated by CONTRACTOR in accordance with this Contract. The City will reimburse CONTRACTOR for the expenses incurred by CONTRACTOR for the purchasing of said water disinfectant chemical at cost plus 12%.

**Section 2.09. Single-Family Meter Installations.** CONTRACTOR will install, at city's request, a meter to serve a single-family residence within ten working days after receipt of the residential tap and inspection fees specified in the City's then current official Rate Order. Meter installations will meet American Water Works Association standards and applicable City requirements. The City will pay CONTRACTOR for these meter installations in accordance with Exhibit 'E'. Upon authorization from the Directors of the City, meter installation may be withheld from an entity which has an overdue account balance with the City.

**Section 2.10. Commercial Meter Installations.** Following the City engineer's approval of the Civil Site Construction Drawings, CONTRACTOR will install all commercial and other non-single family residential meters within ten (10) working days after receipt of the tap and inspection fees specified in the City's then current official Rules. The City will pay CONTRACTOR for said meter installations in accordance with Exhibit 'E'. Upon authorization from the City, meter installation may

be withheld from an entity which has an overdue account balance with the City.

**Section 2.11. Utility Charges.** Electric and telephone service accounts for the Facilities shall be in the name of the City and charges for such service shall be paid directly by the City.

**Section 2.12. Printing and Postage.** CONTRACTOR will charge the City the then current USPS rate for all postage. CONTRACTOR will charge the City for billing stock in accordance with Exhibit 'D'.

**Section 2.13. Inspections.** CONTRACTOR will inspect each connection to the City's Facilities to assure compliance with all applicable TCEQ rules and regulations and City policies, including the City's then current Rate Order and Rules and Regulations Governing Sewer Residential Lines and Sewer Connections. CONTRACTOR shall also perform the inspections listed in Exhibit 'D' at the rates set forth therein and shall also perform such other inspections as the City may request.

**Section 2.14. Meter and Meter Box Replacements.** CONTRACTOR will replace faulty and stuck meters. Meters with over one million gallons usage will be reported to the City and replaced if directed by the City or in accordance with any meter replacement policy adopted by the City. In addition, CONTRACTOR will replace damaged meter boxes as directed by the City. CONTRACTOR will charge the City for services related to meter and meter box replacements in accordance with Exhibit 'D'

**Section 2.15. Grounds Keeping and Mowing.** CONTRACTOR will be responsible for overseeing the grounds keeping and mowing of the City's Facilities if authorized by the City. Facilities will be maintained to an appearance appropriate to a residential neighborhood, including mowing, edging, trimming, and cleaning of buildings, equipment and driveways as required. If requested by the City, CONTRACTOR will solicit proposals from contractors acceptable to the City, and shall administer, inspect and direct the mowing activities of the contractor selected by the City. The City shall pay such contractor directly.

**Section 2.16. Contractor Work on System.** A CONTRACTOR representative shall provide on-site assistance and consultation when any component of the Facilities, such as a motor or pump, is being removed from or returned to the System by a third party contractor. A CONTRACTOR representative shall provide on-site assistance and consultation when any new equipment or component is being added to the Facilities by a third party contractor.

**Section 2.17. Equipment Appearance.** To maintain a neat appearance of the Facilities, CONTRACTOR shall provide painting touch-up services for pumps and piping. CONTRACTOR shall not, however, be required to repaint major pieces of equipment in the Facilities. The City shall reimburse CONTRACTOR for the actual cost of paint provided by CONTRACTOR to perform touch-up services.

**Section 2.18. Fire Hydrants.** CONTRACTOR will visually inspect and flow-test all fire hydrants within the City annually, and will submit a written status report to the City and if required, any fire department serving the City. Any repairs necessary shall be described in the status report and will be considered non-emergency repairs as defined by Section 2.02 unless a fire hydrant is non-operational. If a fire hydrant is found to be non-operational, CONTRACTOR will make necessary repairs so that the fire hydrant can be operated. With prior approval from the City, CONTRACTOR will paint each fire hydrant within the City. Except as otherwise provided herein and in compliance

with applicable law, CONTRACTOR will paint all non-operational fire hydrants black, or if scheduled for repair within seven (7) days, place a black covering over the fire hydrant, unless otherwise directed by the Board of Directors. Additionally, CONTRACTOR will replace or install blue dot reflectors on the roadway adjacent to each hydrant as necessary.

**Section 2.19. Valves.** CONTRACTOR will perform ongoing water distribution valve inspections and submit a written report of inspections to date to the City annually. Any repairs necessary will be considered non-emergency repairs covered by Section 2.03.

**Section 2.20. Lift Station Inspection and Cleaning.** At least three (3) times per week, CONTRACTOR will inspect each of the City's lift stations, cycle each pump and record the run time. At least once every six (6) months (or more often if necessary), CONTRACTOR will pressure wash; remove and dispose of accumulated solids, debris, and grease from each of the City's lift stations.

**Section 2.21. Sanitary Sewer Manhole Inspection.** Subject to the City's prior approval of the cost for and frequency of same, CONTRACTOR will perform an ongoing sanitary sewer manhole inspection program, with subsequent reports submitted to the City. This program shall include a visual inspection of the top of the sanitary sewer manhole and the surrounding area and a visual inspection of the inside of the sanitary sewer manhole as can be seen from the top without physically entering. Any repairs necessary will be presented to the City for prior approval and be considered non-emergency repairs as defined by Section 2.02. CONTRACTOR shall charge for time and materials as described in the Contract for this inspection program.

### III.

#### INSURANCE

CONTRACTOR shall procure and maintain throughout the term of this Contract, at its sole cost and expense, insurance of the types and in the minimum amounts set forth below. CONTRACTOR shall furnish certificates of insurance to the City evidencing compliance with the insurance requirements hereof upon execution of this Contract and annually thereafter to evidence renewal. Certificates shall name CONTRACTOR, name of insurance company, policy number, term of coverage, and limits of coverage. CONTRACTOR shall cause its insurance companies to provide the City with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. CONTRACTOR shall obtain such insurance from such companies having a Best's rating of A+ or better, licensed or approved to transact business in the State of Texas in which the Services shall be performed, and shall obtain such insurance of the following types and minimum limits:

- I. Worker's Compensation insurance in accordance with the laws of the State of Texas, and Employer's liability coverage with a limit of not less than \$1,000,000 each employee for Occupational Disease; \$1,000,000 policy limit for Occupational Disease; and Employer's Liability of \$1,000,000 each accident.
2. Commercial General Liability insurance including coverage for Products/Completed Operation, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:



\$2,000,000 general aggregate limit  
 1,000,000 each occurrence,  
 1,000,000 aggregate Products, combined single limit  
 1,000,000 aggregate Personal Injury/Advertising Liability  
 1,000,000 Pollution

3. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
4. Umbrella Excess Liability insurance written as excess of Employer's Liability, with limits not less than \$2,000,000 each occurrence combined single limit.
5. Crime Bond with a limit of liability not less than \$50,000.

The City shall be added as additional insureds to all coverages required above, except those in Paragraph (I). All policies written on behalf of CONTRACTOR shall contain a waiver of subrogation in favor of the City and the City's agents and employees. In the event of a reduction in coverage or lapse or cancellation of any required insurance it is the specific responsibility of CONTRACTOR to notify the City immediately and to immediately reinstate the insurance at the coverages required herein or to purchase replacement insurance that meets the requirements of this Contract. Failure by CONTRACTOR to immediately reinstate or replace said insurance shall be a material breach of this Contract and the City shall have the right to immediately terminate this Contract upon written notice. CONTRACTOR's failure to provide insurance as required hereunder or to supply the required evidence of insurance, or the failure of the City to require evidence or to notify CONTRACTOR of any breach by CONTRACTOR of the requirements of this provision or deficiencies in the insurance obtained, shall not constitute a waiver by the City of any of these insurance requirements, or a waiver of any other terms or conditions of this Contract, including CONTRACTOR's obligations to defend, indemnify and hold harmless the City as required in this Contract.

#### IV.

#### **GUARANTIES, INDEMNITY AND LIMITATIONS**

**Section 4.01. Guaranties.** CONTRACTOR will use generally accepted business practices in procuring materials and equipment. CONTRACTOR will be neither responsible nor liable for any manufacturer's guaranty or guaranties of or in connection with such materials or equipment. CONTRACTOR will use reasonable efforts to obtain the standard guaranties applicable in the particular industry manufacturing such materials or equipment, and will assign same to the City. CONTRACTOR will provide a one-year warranty on workmanship for all materials or equipment installed by CONTRACTOR personnel or CONTRACTOR subcontractors. CONTRACTOR will develop a list of recommended spare parts to be maintained at the Facilities and will deliver inventory and replenish said parts on a regular basis.

**SECTION 4.02. Indemnity.** AS PART OF THE CONSIDERATION FOR THE CONTRACT, CONTRACTOR, FOR ITSELF AND ITS EMPLOYEES, SUCCESSORS AND ASSIGNS, AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, DIRECTORS, REPRESENTATIVES AND AGENTS (THE "CITY INDEMNITEES") FROM

EVERY LOSS, DAMAGE, INJURY, COST, EXPENSE, CLAIM, JUDGMENT OR LIABILITY OF EVERY KIND OR CHARACTER, WHETHER IN CONTRACT, TORT OR OTHERWISE, WHICH ARISES DIRECTLY OR INDIRECTLY FROM CONTRACTOR'S WILLFUL, INTENTIONAL, RECKLESS OR NEGLIGENT (WHETHER ACTIVE, PASSIVE OR GROSS) ACTS OR OMISSIONS RELATED TO OR ARISING FROM THIS CONTRACT. THIS INDEMNITY AND HOLD HARMLESS AGREEMENT WILL APPLY WHETHER SUCH ACTS OR OMISSIONS ARE BY CONTRACTOR ITS EMPLOYEES, OR ANY SUBCONTRACTOR OR AGENT OF CONTRACTOR. ADDITIONALLY, CONTRACTOR SHALL INDEMNIFY THE CITY INDEMNITEES FROM ANY AND ALL LIABILITY, LOSS OR DAMAGE THAT ONE OR MORE OF THE CITY INDEMNITEES MAY SUFFER AS A RESULT OF CLAIMS, DEMANDS, COSTS OR JUDGEMENTS AGAINST SUCH CITY INDEMNITEE ARISING OUT OF THE FAILURE OF CONTRACTOR, ITS EMPLOYEES, SUCCESSORS, ASSIGNS, SUBCONTRACTORS OR AGENTS, TO CONFORM TO THE STATUTES, ORDINANCES, OR OTHER REGULATION OR REQUIREMENTS OF ANY GOVERNMENTAL AUTHORITY IN CONNECTION WITH THE OPERATION OF THE FACILITIES UNDER THIS CONTRACT, UNLESS FAILURE TO SO CONFORM WAS A DIRECT RESULT OF CONTRACTOR FOLLOWING THE EXPRESS WRITTEN INSTRUCTION OF THE BOARD OF DIRECTORS OF THE CITY. THE PROVISIONS OF THIS SECTION 4.02 SHALL SURVIVE ANY TERMINATION OF THIS CONTRACT.

**Section 4.03. Reasonable Diligence.** CONTRACTOR agrees to use due diligence and good business practices in the operation of the Facilities. CONTRACTOR will be liable for any direct or indirect loss, injury or damages resulting from the diminution or interruption of service within the Facilities that is caused by the willful misconduct or negligence (whether active, passive or gross) of CONTRACTOR, its employees, representatives, agents or subcontractors.

**Section 4.04. Force Majeure.** Neither the City nor CONTRACTOR will be in default if performance of their respective obligations under this Contract is delayed, disrupted or becomes impossible because of any act of God, war, hurricane, earthquake, fire, strike, work stoppages, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the party affected (collectively, "Force Majeure"). Upon occurrence of any such event, CONTRACTOR will operate the Facilities to the best of its ability under the circumstances, and CONTRACTOR will not be responsible for any damages, fines, penalties or claims resulting therefrom. If any additional expense is incurred by CONTRACTOR in such operation, that expense will be deemed to be an extraordinary expense, all of which will be paid by the City to CONTRACTOR in accordance with Paragraph VI of Exhibit 'C'. No event of Force Majeure will allow for the delay or disruption of the respective financial obligations of CONTRACTOR or the City except in the event of widespread economic collapse or banking failures within the United States of America.

**Section 4.05. Compliance with Applicable Laws.** CONTRACTOR will operate the Facilities in compliance with all applicable local, state, and federal laws, rules and regulations.

**Section 4.06. Fines and Penalties.** Provided that (a) this Contract is in force, (b) the Facilities meet the TCEQ design criteria, and (c) the City has not rejected or otherwise failed to approve any of CONTRACTOR's operational recommendations which would have prevented the violation, CONTRACTOR will pay any and all fines or penalties assessed against the City as a result of actions taken by TCEQ or the Environmental Protection Agency. The City's failure to approve CONTRACTOR's operational recommendations that would have prevented the violation(s) which result in fines or penalties will relieve CONTRACTOR of any responsibility under this Section 4.06 to pay the applicable fines or penalties.

## V.

### PAYMENTS

The City will pay CONTRACTOR for services to be rendered under this Contract in accordance with the fee schedules contained in Exhibit 'C', Exhibit 'D' and Exhibit 'E' and as otherwise specifically provided in this Contract. CONTRACTOR shall provide its invoices to the City bookkeeper at least five (5) business days prior to the next scheduled meeting of the City Council. To the extent permitted by law, payment of invoices by the City shall be governed solely by the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code. CONTRACTOR hereby waives any other rights or remedies it may have with respect to payment of invoices.

## VI.

### TERM, TERMINATION, AND RECORDS

**Section 6.01 Term.** This Contract commences on \_\_\_\_\_ 2015, and will remain in effect for one year and thereafter on a year to year renewal, subject to the rights of either party to terminate the Contract at any time in accordance with Section 6.02.

**Section 6.02. Termination.** Either party to this Contract may terminate this Contract, either with or without cause, by delivering thirty (30) days prior written notice to the other party in accordance with and to the address in Section 7.07 below. Upon termination of this Contract, the City shall pay CONTRACTOR within the time period provided above any outstanding payment due and owing to CONTRACTOR for work performed prior to the termination date; provided, however, the City shall have the right to reduce such final payment as a set-off for any direct damages incurred by the City related to CONTRACTOR's willful, intentional or reckless negligent (whether active, passive or gross) acts or omission in connection with the services performed under this Contract.

**Section 6.03. City Records.** CONTRACTOR will retain records that CONTRACTOR initiates or receives on behalf of the City in compliance with the City's Records Management Policy, the City's adopted Records Retention Schedules and the Texas Local Government Records Act. If this Contract is terminated, CONTRACTOR will deliver to the City or the City's designated agent, all of said records at no cost to the City not later than thirty (30) days following the effective date of termination, with the exception of all records related to billing and other items necessary for the continued operation of the Facilities, which shall be delivered no later than the effective date of termination. CONTRACTOR may make copies, at CONTRACTOR's expense, of those records.

## VII.

### MISCELLANEOUS

**Section 7.01. Record Drawings.** The City will provide CONTRACTOR with three sets of record drawings of the Facilities. CONTRACTOR will maintain these drawings in a manner that allows their efficient and effective use in solving problems related to the Facilities.

**Section 7.02. Identification.** CONTRACTOR employees will readily identify themselves

when CONTRACTOR communicating within the City and with City customers. CONTRACTOR maintenance and CONTRACTOR operating personnel will possess pictured I.D. cards and wear distinctive clothing bearing CONTRACTOR's name. CONTRACTOR vehicles will display CONTRACTOR's name. All other CONTRACTOR employees will possess pictured I.D. cards.

**Section 7.03. Modification.** Modification of this Contract may be made only by a written document signed by CONTRACTOR and the City.

**Section 7.04. Assignability.** Neither CONTRACTOR nor the City may assign its interest in this Contract without the prior written consent of the other party.

**Section 7.05. Subcontract Repairs.** With the City's best interest in mind and acting in good faith with the requirements of this Contract, CONTRACTOR may subcontract any repairs and/or services that CONTRACTOR is to perform under this Contract, all as CONTRACTOR deems appropriate. However, such subcontracting shall not relieve CONTRACTOR of any of its obligations under this Contract, and subcontractors shall be considered to be employees of CONTRACTOR for the purposes of delineating those responsibilities. CONTRACTOR shall require all subcontractors to carry insurance of the types and in the minimum amounts set forth in Article III of this Contract. CONTRACTOR shall supervise and inspect all subcontracted repairs or services performed under the terms of this Contract. The City may, at its discretion, engage its own contractor for certain repair services. In that event, the City agrees that CONTRACTOR shall not be responsible for the quality or timeliness of those services. CONTRACTOR will invoice the City for managing subcontractors as set forth in Paragraph V of Exhibit 'C'.

**Section 7.06. Independent Contractor.** CONTRACTOR, its employees, agents and subcontractors are not the City's employees. CONTRACTOR serves the City solely as an independent contractor.

**Section 7.07. Notice.** Any notice required under this Contract will be in writing and sent by certified mail with return receipt or by hand delivering with return receipt to the intended party's address of record. Notice will be deemed given as of the date of the return receipt when mailed or delivered to the following addresses:

**CONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CITY:**

City of Montgomery  
City Administrator  
101 Old Plantersville Rd.  
Montgomery, TX 77356

The parties may change the respective address by giving the other party fifteen (15) days written notice to the other party.

**Section 7.08. Place of Performance.** The place of performance of this Contract shall be Montgomery, Montgomery County, Texas.

**Section 7.09. Venue; Attorney Fees.** Venue shall lie in Montgomery County, Texas. The prevailing party in any such suit shall be awarded reasonable attorney's fees and court costs.

**Section 7.10. Parties in Interest.** This Contract shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any benefits or rights upon any other person or entity, including, without limitation, the customers of the City.

**Section 7.11. Counterparts.** This Contract may be executed in one or more original, electronic or facsimile counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same document.

**Section 7.12. Severability.** The invalidity or unenforceability of any particular provision, or any part thereof, of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such invalid or unenforceable provision were omitted.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE

CONTRACTOR: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_  
Print Name

SIGNATURE: \_\_\_\_\_

CITY OF MONTGOMERY:

BY: \_\_\_\_\_

ATTEST

BY: \_\_\_\_\_

**EXHIBIT "A"**

**CITY OF MONTGOMERY  
WATER AND WASTEWATER FACILITIES**

<b>Facility</b>	<b>Location</b>	<b>Approximate Physical Address</b>
Stewart Creek WWTP	South of SH 105 at the dead end of Buffalo Springs Drive	265 Buffalo Springs Drive
Lift Station No. 1	Southwest corner of SH 105 and FM 2854	236 FM 2854
Lift Station No. 2	Town Creek WWTP	307 Liberty Street
Lift Station No. 3	FM 149, northwest of Bus Barn	137900 Liberty Street
Lift Station No. 4	Old Plantersville Rd., south of City Hall	647 Old Plantersville
Lift Station No. 5	SH 105, east of NAPA auto parts store	2150 Eva Street
Lift Station No. 6	SH 105, adjacent to MISD stadium	22628 SH 105
Lift Station No. 7	Lone Star Parkway, adjacent to Community Center	2510 Lone Star Parkway
Lift Station No. 8	FM 149, north of Berkley	14460 Liberty Street
Lift Station No. 9-Decommissioned	Berkley and Bessie Price Owens	215 Berkley Drive
Lift Station No. 10	Buffalo Crossing, north of creek	1300 Buffalo Crossings Drive
Lift Station No. 11	Lone Star Parkway, east of Plez Morgan	1900 Lone Star Parkway
Lift Station No. 12	Buffalo Crossing, south of creek	1100 Buffalo Crossings Drive
Lift Station No. 13	Northeast corner of C.B. Stewart and SH 105	300 C.B. Stewart
Lift Station No. 14	Montgomery Summit Business Park	22400 FM 1097
Water Plant No. 2	West of the intersection of Houston and Stewart	905 Stewart Street
Water Plant No. 3	FM 1097, east of FM 149	26246 FM 1097

## **EXHIBIT 'B'**

### **HOLIDAYS**

CONTRACTOR and the City agree that the following days are will be recognized as holidays during each contract year:

New Year's Day (Actual Date)

Good Friday (Actual Date)

Memorial Day (Monday Observed)

Fourth of July (Actual Date)

Labor Day (Monday Observed)

Thanksgiving (Actual Date)

Friday after Thanksgiving (Actual Date)

Christmas Eve (Actual Date)

Christmas Day (Actual Date)



**EXHIBIT 'C'**

**COMPENSATION FOR SERVICES**

- I. BASE OPERATIONS FEE: For and in consideration of basic services outlined in Article I of a Contract and rendered to and on behalf of the City by CONTRACTOR, the City agrees to pay to CONTRACTOR, each month, the base operations fee set forth below.
- II. Operation of the City's Facilities: Sewer Plant No. 1, \$ \_\_\_\_\_; Sewer Plant No. 2, \$ \_\_\_\_\_; Water Plant No. 2, \$ \_\_\_\_\_; Water Plant No. 3, \$ \_\_\_\_\_; Lift Stations 1-14 @ \$ \_\_\_\_\_ each..
- III. AUTHORIZED MAINTENANCE LEVEL: Consistent with the principles of effective cost containment, efficient maintenance and maximization of operational procedures, the City authorizes CONTRACTOR to perform non-emergency repairs when, in CONTRACTOR's opinion, the cost to the City of such repairs will not exceed \$2,500.
- IV. MATERIALS: Cost of materials billed and/or sold to the City by CONTRACTOR will include an administrative fee of 12% as provided in this Contract. Some materials are billed at cost as provided in this Contract.
- V. SUBCONTRACT (S): CONTRACTOR's supervision and inspection fees for subcontracts will be 12% of the dollar amounts of the subcontract as provided in this Contract. CONTRACTOR will pass thru the cost of the subcontractor and bill for time involved in supervision, assistance and inspection. For all repairs and/or services that CONTRACTOR is qualified and capable to perform but have been performed by a subcontractor in accordance with Section 7.05 of the Contract, CONTRACTOR shall invoice the City no more than if CONTRACTOR had actually performed the work itself.
- VI. EXTRAORDINARY SERVICES: CONTRACTOR may render additional services not specified in this Contract. Extraordinary services not anticipated and not specified in this Contract may also be requested of CONTRACTOR by the City. The City and CONTRACTOR will in good faith negotiate the amount to be paid by the City to CONTRACTOR for such extraordinary services.

## **EXHIBIT 'D'**

### **RATES**

#### **INSPECTIONS**

<u>Classification</u>	<u>Rate</u>
Customer Service Inspection	\$ _____ each
Pre-Construction/Post-Construction Inspection	\$ _____ each
Single-Family Residential (SFR) Sewer Tap Inspection	\$ _____ each
Non-SFR Sewer Tap Inspection	\$ _____ Per quote
Grease Trap Inspection (when requested)	\$ _____ each
Backflow Prevention Device Inspection	\$ _____ each

#### **METER AND METER BOX REPLACEMENTS**

<u>Classification</u>	<u>Rate</u>
SFR Meter Replacement	\$ _____ plus cost of meter
Non-SFR Meter Replacement	Cost plus 12%
SFR Meter Box Replacement	\$ _____ each
Non-SFR Meter Box Replacement	Cost plus 12%

#### **PERSONNEL**

<u>Classification</u>	<u>Straight Time Per Hour*</u>
Operations Supervisor/Compliance Manager	\$ _____
Equipment Operator/Technician/Compliance	\$ _____
Certified Operator	\$ _____
Field Technician	\$ _____
Clerical/Administration	\$ _____

## EQUIPMENT

Classification	<u>Straight Time Per Hour*</u>
Backhoe & Rig	\$ _____
Mini Excavator & Rig	\$ _____
Boring Machine	\$ _____
Air Compressor & Jackhammer	\$ _____
Crane Truck	\$ _____
2" Pump & Hoses	\$ _____
Utility Truck/ I ton	\$ _____ / _____
Shoring Equipment	\$ _____ (per use)

\*Straight time will be charged for work performed from 7:00 a.m. to 4:00 p.m. Monday through Friday, except on Holidays as defined in Exhibit 'B'. Overtime will be charged for work performed at any time other than straight time and shall be 1.5 times straight time rate.

**EXHIBIT 'E'**

**RATES FOR TAPPING & NEW METER INSTALLATION**

The following rates for meter taps include all labor, equipment, materials, meter and box.

**Single-Family Residential Meter Taps**

1" Meter \$ \_\_\_\_\_ each

Taps over 40 feet long or deeper than five (5) feet will be charged at cost listed above plus \$ \_\_\_\_\_ per linear foot over the first 40 feet.

**Other Taps**

Other taps, including sewer, and meters will be on a quoted basis for each installation based on customer requirements and specifications approved by the City's engineer.